Pottle, Moses L. etal v. Harless, Adolph 1862 St. Louis 463/10

615/39
59/462
32 MO 232

Pottle (resp) plaintiff
Bayley, Roman
rented 2 story house
debt for rent
Harless verbally
promised to say bill
was a party to the lease

John N Strait atty Harless (app) def
wins w/ JOP
indebted $24.50 - land court

Bates Aff
app doesn't firmly express objection to evidence
given by plaintiff in his bill of exceptions

Page 1

State of Missouri }
County of St Louis } S.S.

Be it Remembered that on the Fourth day of October in the year of our Lord One thousand eight hundred and fifty eight there was filed in the office of the Clerk of the St Louis Land Court a Transcript in an Appeal case from Liberty Waite Esquire a Justice of the peace within and for the County of St Louis.

Which Transcript is in the words and figures following. to wit:

Transcript & Papers from Justice (Acct.)

Otto Frank & Adolph Harless.

To Moses L Taylor & Romanzo W. Bayley Dr.

To one months and nineteen days Rent of Two Story Brick Dwelling house situate on S. Side Pine Btw 15 & 16 Street being the West house of Two of same size from 22 September to 11 November inclusive 1857 @ $15 per Month. } $24.50

(Verdict)

Moses L. Pottle & Roman N. Bayley
vs
Adolph Harless.

Before Justice Waite July 26: 1858 Action for Rent for $24.50.

We the Jury find for the defendant.

Geo. E. Ministers Foreman

(Affdvt. for Apl)

Moses L. Pottle & Roman N. Bailey, Plaintiffs
vs.
Adolph Harless Defendant

Before Justice Waite.

This Day, personally appeared before Liberty Waite a Justice of the Peace in and for the County of St Louis, in the State of Missouri Roman N. Bayley who being duly sworn, upon his

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oath, says that the application for an appeal, in the above entitled case, is not made for vexation or delay, but because he believes the appellant is injured by the judgment of the Justice.

Sworn to and Subscribed before me, this 27th day of July 1858. } R. N. Bayley.

Liberty Waite Justice of the Peace

(Bond) We the undersigned, R. N. Bayley and J. Byrne Jr. acknowledge ourselves indebted to Adolph Harless in the sum of Twenty five dollars, to be void upon this condition: Whereas R. N. Bayley has appealed from the judgment of Liberty Waite a Justice of the Peace, in a certain action between Moses L. Pottle and Roman N. Bayley plaintiffs and Adolph Harless is defendant. Now if, on such appeal, the judgment of the Justice be affirmed, or if, on the trial anew, in the St Louis Land Court of St. Louis County judgment be given against the appellant, and he shall satisfy such judgment, or if the appeal shall be dismissed, and he shall pay the judgment of the Justice, together with the costs of the appeal, the recognizance shall be void.

Attest, this 27th day of July 1858, Liberty Waite Justice } R. N. Bayley (Seal) J. Byrne Jr. (Seal)

(Docket Entries) Moses L. Pottle and Romanzo N. Bayley vs Otto Frank and Adolph Harless } No 10 June Term 1858. Before Justice Waite Action on account for $24.50.

Sum.s issued to Constable Watson June 23d 1858. Returnable on the 10th day of July 1858. Returned Executed on Adolph Harless. Otto Frank not found. the parties appeared and not being ready for trial, case continued to the 26th day of July 1858. on that day the parties appeared and being ready for trial the plaintiffs dismissed as to Otto Frank. Whereupon the defendant called

3 for a Jury, a venira was issued and three good and lawful men appeared, who being duly sworn to try the matter in issue who after hearing the evidence Returned the following Verdict. We the Jury find for the defendant. George E. Minister forman It is therefore Ordered and adjudged by the Justice that the defendant have Judgment against the plaintiff for the Costs herein expended. Now on this day July 27th 1858. comes Roman N. Bayley one of the plaintiffs and prayed an appeal to the St Louis Land Court of St Louis County and enters into recognizance in the sum of $25.00 with J. Byrne Jr. on appeal Bond appeal allowed.

Judgment for Defendant July 26th 1858.

Justice	$ 2.35
Constable Watson	1.50
Trscpt. pd. by Pltff	1.50
Jury fee	0.75

State of Missouri }
County of St. Louis } S.S. I, Liberty Waite a Justice of the Peace within and for the County aforesaid, do hereby Certify that the foregoing is a true full and complete Transcript of the docket entries together with all the original papers now on file in my office in said case.

Given and Certified this 27th of July 1858.

Liberty Waite Justice of the Peace.

And afterwards the following proceedings were had in the St Louis Land Court in this cause, to wit;

October Term 1858

Monday February 21st 1859

Jury Waived. Judgmt.

Moses L. Pottle & Romanzo N. Bayley vs Adolph Harless. } Judgment. Now at this day comes said parties by their respective attorneys, and

both parties waiving a Jury, this cause is tried by the Court, upon the evidence and proofs adduced, and the Court having heard and being fully advised of and concerning the premises, doth find that the defendant is indebted to the Plaintiffs, in the sum of Twenty four dollars and fifty cents. It is therefore Ordered and adjudged by the Court, that the Plaintiffs recover of said defendant, the debt aforesaid, in form aforesaid as assessed, and also their costs and charges herein expended and have Execution therefor.

And afterwards the following further proceedings were had in this cause, to wit;

Wednesday February 23th 1859

Mot. for New Trial filed

Moses L. Pottle & Romanzo W. Bayley vs Adolph Harless } Motion for New Trial filed in this cause.

(For Which Motion for New Trial. See "Bill of Exceptions" 6th)

And afterwards the following further proceedings were had in this cause, to wit;

Thursday February 24th 1859.

Mot. for New Trial Overruled

Moses L. Pottle & Romanzo W. Bayley vs Adolph Harless } Now at this day the Court being fully advised of and concerning the Motion heretofore filed in this cause for New Trial, doth Order and adjudge, that said Motion be overruled.

And afterwards "to wit" on the Twenty fifth day of February A. D. 1859 there was filed in this cause a Bill of Exceptions.

Which Bill of Exceptions is in the words and figures following, to wit;

Bill of Exc.

Moses L. Pottle et al

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Adolphus Harless vs. } In the St. Louis Land Court
Oct. Term. 1858.

Be it Remembered that on the trial of the above entitled cause, the following proceedings were had; both parties waived a Jury in the case. The Court asked of Counsel what was at issue in the case, whereupon Counsel for pltffs stated that on the 22d January 1857, R. N. Masterson executed to Otto Frank and Adolphus Harless a lease for six months. Frank occupied the premises. Harless did not. Before the expiration of the lease, the lessor assigned her interest in the same to pltffs who at the same time by deed acquired the property of Masterson. After the expiration of the lease Frank continued in possession of the premises, and with Harless' knowledge and consent. He should contend that Harless was bound for rents which accrued after the expiration of the lease.

Counsel for defts stated that Counsel for pltffs had failed to state the case fully. He, Counsel for defts should endeavor to shew that Harless signed the lease only as security and that he was not liable for rents which accrued after the expiration of the lease.

Pltffs then called J. Byrne, Jr. as a Witness, who testified as follows:

J. Byrne Jr.'s Test: I know the parties to this suit: An instrument of writing was here handed to the Witness by Counsel of pltffs:

The Witness further said: I believe I was present when this lease was executed. It is so long ago I cant say positively.

The Court here took the lease and read it.

Said lease was not formally offered in evidence.

Counsel for pltffs supposed the Court considered it as offered in evidence. Counsel for defts. intended, when

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the lease was formally offered in evidence, to object to the reading of the same. The Court understood and now understands that the Lease was in evidence.

Lease of Masterson To Frank & Harless

We Have leased from R. A. Masterson for six Months to commence on the Twenty second day of January Eighteen hundred and fifty seven at the annual rent of One Hundred and eighty Dollars payable monthly at the end of each month the following premises to wit Two story Brick Dwelling House situate on the South side of Pine Between 15th & 16th Sts being the Third House West of 15th Street

Any failure to pay each Months Rent when due to produce a forfeiture of this lease if so determined at any time whatever within Five days after such failure by notice in writing to that effect given to said Lessees their heirs or legal representatives to said Lessor or her legal representatives This lease of said premises or any part thereof is not to be assigned on the premises or any part of said premises sublet under penalty of forfeiture without the written consent of said Lessor her heirs, legal representatives or assigns At the expiration of this Lease the said premises to be delivered to said Lessor her heirs, or legal representatives or assigns in the condition received only excepting natural wear and decay or the effects of accidental fire. All temporary repairs deemed necessary by said Lessees to be made at their expense The said Lessees and all who may hold under them hereby engage to pay double rent for every day they or any one else in their names shall hold on to the whole or any part of said premises after the expiration of this lease or after perfection of the same. And in case of any forfeiture of this lease the said Lessor her heirs or legal representatives or assigns shall be entitled to and may take immediate possession of said premises any custom usage or law to the contrary notwithstanding. The said premises to be kept free of any nuisance in or adjacent thereto at the expense of the said Lessees.

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The interlining above was done before signing of this Lease.

Otto Frank.

St Louis 22d January 1857. Adolphus Harless.

R. A. Masterson. By J. Byrne Jr. Agt.

(Upon the back of the above lease are endorsed the words and figures following, to wit:

Clerk)

For and in consideration of one dollar Received by the Undersigned from Messrs Pettle & Bailey of St. Louis City & County State of Missouri Hereby transfer my right title and interest to the within Lease.

R. A. Masterson.

St Louis 2d May 1857.

J. Byrne Jr. Test Cont.

The Witness in continuation said. I acted as agent for the lessor in collecting the rent. I continued to act as such agent up to May 1857, after that time I acted as agent for the plffs in collecting the rent. Rent which accrued after the expiration of the lease was paid. A payment was made on Sept 22d 1857. I cant say who paid it. Frank occupied the premises up to the time for which the suit is brought.

Counsel for plffs then asked witness to state what conversation had taken place between himself and Harless about the payment of rent sued for.

Counsel for defs objected to the admission of such evidence, which objection the Court overruled, to which decision and ruling of the Court defs. excepted.

The Witness further said; The Bill for Rent was frequently sent to both Frank and Harless, Finally Harless came to me and I told him Frank was very dilatory in paying the rent and the only way he Harless could release himself from his liability to pay it, was for me to put Frank out of the house. Harless said he did not want that done-

that Frank's wife was his sister and he would not like to have her put out in the street. He told me to call often on Frank and try to coax the money out of him.

Cross Examination.

The reason Harless signed the lease was: Frank was a stranger to me – I did not know that he was responsible. I declined to lease to him unless he would get some one to join with him who was responsible. He brought Mr. Harless who was known to me as the keeper of a drug store, and who I supposed was responsible. Mr Harless signed the lease, and was purposely made a party to it as principal with Frank in order to secure to us the payment of the rent. Harless never occupied the premises, that I know of, and it was understood at the time the lease was signed that the house was to be occupied by Frank.

Counsell for pltffs objected to the witness stating, in reply to the question of Counsel for deft. in what capacity did Harless sign the lease, which objection was overruled by the Court, to which decision and ruling the pltffs excepted.

The witness further said:

I always draw leases in that way so as to bind both parties, which I intended to do in this case. I know that rent was paid because it was credited on the books. It would not have been credited if it had not been paid. I did not see it paid.

This was all the evidence introduced, whereupon a verdict and Judgment were rendered for pltffs.

Afterwards deft filed his motion for a new trial.

Mo. for New Trial

Moses L Pottle et al
vs
Adolphus Harless

And now comes the defendant by his attorney, and moves the Court to set aside the

9 verdict and Judgment rendered in the above entitled cause, and grant a new trial, for the following reasons, viz:

1st Because there was no evidence introduced on the trial of said cause, upon which to render a verdict and Judgment for the plaintiffs.

2nd Because the verdict and Judgment rendered in said cause are against the evidence.

3rd. Because the verdict and Judgment rendered in said cause are against the law.

4th. Because the verdict and Judgment rendered in said cause are against both the law and the evidence.

5th. Because the Court erred in admitting in testimony verbal declarations made by the defendant, Harless, relative to the payment of rent, which accrued after the expiration of a certain lease spoken of by the witness Byrne.

6th. Because the Court, sitting as a Jury, erred in rendering a verdict for the plaintiffs on the ground that defendant was bound by these verbal declarations.

7th Because the Court, sitting as a Jury, erred in rendering a verdict in favor of the plaintiffs, on the ground that defendant was bound by the terms and conditions of a certain lease, which said lease was not offered in evidence on the trial of said cause.

8th Even admitting that said lease was in evidence and properly before the Court, (which fact is not admitted but denied,) the Court still erred in rendering a verdict and Judgment against said defendant, and for the following reasons, to-wit:

First It was in evidence that, in fact, said defendant, Harless, signed said lease as security, and as such security he was released from his liability by the act of the

lessor in assigning his interest in said lease;

Second — The defendants cannot be bound for the payment of rents after the expiration of the term for which the lease was executed, the tenancy under said lease being absolutely dissolved by the efflux̄ion of time, without notice for the purpose, by either party;

and Third — The clause in said lease about the payment of double the amount of rent for every day the lessees might retain the premises described therein, does not bind this defendant, because the lessors never gave notice to defendant that they should exact the same and they never made any demand for the same.

4th The Court rendered its verdict and judgment before the case had been submitted by Counsel for either party to said cause, by which Counsel for the defendant was cut off from the privilege and opportunity of asking the Court to declare the law applicable to the case.

Jno. N. Straub Atty for Deft.

Bill of Excp.s

Which was overruled by the Court to which defendant excepted and brings this his bill of exceptions and prays that the same be allowed, signed and sealed, by the Court and Judge thereof which is accordingly done.

C. B. Lord.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday February 26th 1859

Moses L Pottle & Romanzo W. Bayley vs Adolph Harless } Appeal to the Supreme Court.

Affdvt. for Apl. filed Apl. grntd. & Bond filed

Now at this day comes said defendant by his attorney and files herein an affidavit for an appeal, and on application of said defendant by his attorney, an appeal is

11 granted him from the decision herein rendered, and thereupon he files in this cause a bond duly executed, as required by the Court, in the sum of One Hundred dollars, with Adolphus Harless as principal and Fred Wiebusch and John N. Straab as sureties which is approved by the Court

Which Affidavit for Appeal and Bond are in the words and figures following, to wit:

Affdvt. for Apl.

Moses L. Pottle et al vs Adolphus Harless	In the St. Louis Land Court. Feb 5. 1858.

I, John N. Straab, agent for the defendant in the above entitled cause makes oath and says that the appeal in said cause is not made for vexation or delay but because the affiant believes that the appellant is agrieved by the Judgment or decision of the Court.

Jno. N. Straab

Subscribed and sworn to before me this 26th of Feby. 1859.

Chas. A. Mantz Clerk
By E. P. Wash D. C.

Bond

Know all men, by these Presents, That we Adolphus Harless as principal, and Fred Wiebush & John N. Straab as Sureties are held and firmly bound unto Moses L. Pottle and Romanzo Bailey in the sum of One Hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at St. Louis, this 26th day of February A. D. 1858.

The condition of the above Obligation is such, that Whereas Adolphus Harless has appealed from the judgment rendered against him and in favor of Moses L. Pottle and Romanzo Bailey in the St. Louis Land Court, for the sum of twenty four

dollars and fifty cents together with costs.

Now, if the said appellants will pay all costs and damages that may be awarded against him occasioned by such appeal; and shall prosecute his appeal; and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Land Court to give; and shall, if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

Approved by the Court Feb. 26th 1859. C. A. Mantz, Clk

Adolphus Harless. (Seal)
Fred Wiebusch (Seal)
Jno. N. Straat (Seal)

State of Missouri } S.S.
County of St. Louis }

I, Charles A. Mantz, Clerk of the St. Louis Land Court within and for said County, Certify the foregoing Transcript to be a true and correct copy of the Record and proceedings had in the St Louis Land Court and of the Transcript and papers in Appeal from Justice Waite (except the summons and venire) in the case of Moses L. Pottle and Romanzo Bayley Plaintiffs and Adolphus Harless and another defendants as fully as the same now remains on file and of Record in my office.

In Testimony, Whereof, I hereto set my hand and affix the seal of our said Court at Office in the City of St. Louis this First day of April A.D. 1859.

Charles A. Mantz, Clerk.

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Transcript of Papers from Justice (Embodies the following, viz:) Page. 1. 2 & 3.
Accd. Verdict. Affdvt for Apl. Bond. & Docket Ents. " " " "
Jury waived. Judgt. Mo. for New Trial filed . " 3 & 4
Mo. for New trial Overruled. & Bill of Excp. filed. " 4.
Bill of Excp. (Embodies the following, viz:) . " 4 to 10 in.
J. Byrne's Jr. Test. " Lease of Masterson to Frank et al. " 5 to 8 in
Mo. for New Trial. . . . " 8. 9 & 10.
Affdvt. for Apl. filed, Apl. grntd & Bond filed . . " 10 & 11.
" " " & Bond. . . " 11 & 12.

4000 words $6.-
Certificate -50
$6.50

92 ~~105~~ ~~111~~ ~~108~~ ~~209~~ ~~231~~

March Term 1862

39 affd

Moses L. Pottle & Roman L. Bagley, Respondents

vs.

Adolph Harless. appellant

Appeal Land Court

Edward F. Farish for Pfff
John N. Strattfor Harless

M.E

Filed 4 Oct. 1859.
Wm. S. Glanville Ck.

This Transcript $6.50 Pd by Defendant.

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$10.00 pd. Ch. Glanville on Ctn' appeal by deft. per J. N. Stratt atty.

assgt. f

1862 April 26. Submitted ~~Leave for reply to file brief~~ ~~on next time~~ Respdts statement & brief filed

1862 May 14. Affirmed Opinion filed Dp 51.

Moses L. Pottle et al rests
v.
Adolph Harless.
applt.

IN SUPREME COURT,
TERM, 18
March term,
1860.

AND now comes the said appellant and says, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by respondents
2. That said Court rejected proper and legal testimony offered by
3. ~~That the Court gave to the Jury improper and illegal instructions.~~
4. ~~That the Court refused to give to the Jury proper and legal instructions offered by~~
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the respondents when it should have been rendered for the appellant
10. That said Court overruled the motion for a new trial, made by appellant

Jno. N. Straat
atty for appellant

And now come the Respondents and for joinder in error say, that there is no error in the record and proceedings of said St. Louis Land Court in said cause, as assigned by said

Edw. T. Farish
Atty. of Respondents

No. 237.

March term, 1860.

Moses L. Pottle et al

vs.

Adolphus Harless.

assignment of errors

Filed April 2d 1860.

Wm. S. Glanville.

Pottle gals plaintiffs respondents
vs
Harless defendant Appellant

In the Supreme Court of the State of Missouri at St Louis -

Respondent's Statement

This is a suit against Harless and Frank for rent at the rate of $15 per month - of certain premises from 22 Sepr 57 to 11 Nov 57 - $24.50 - by plaintiffs as Assignees of R A Masterson of a lease by her made to Otto Frank for six months from 22 Jan 57 at $15 per month.

~~Possession of the~~ The suit was instituted before a Justice of the Peace, judgment there for defendant. Thence appealed to the Land Court. Tried there by the Court without a Jury. Judgment for plaintiffs twenty-four 50/100 Dollars. Thence brought here by defendants by appeal.

In the Land Court the plaintiff proved the occupation of the premises by one of the defendants Frank, and that the rent claimed was due.

The defence consisted first that Harless, though one of the principals in the lease, was only security for Frank, and that the lease having expired, plaintiffs could no longer claim.

The only witness called to the stand by either party was John Byrne Jr - who to defendant's interrogatories answered that the lease was for Frank's benefit, but that he Mr Byrne not knowing how responsible Frank might be, refused to let him have the premises until some one would ~~be~~ join him as principal. Thereupon Frank brought his brother in Law Harless and the two then entered into the lease, as lessees.

Mr Byrne proved that since assignment of the lease ~~he had collected~~ to plaintiffs, he had collected the rent in their name.

Judgment was for simple not double rent.

Hen. T. P. Garecke
Atty of Respondents -

105 Mich J. 62

Pottle gals
v
Kearless

Respondent's Statement

Filed April 28. 1882
A W Mead
Clerk

Pottle & als plaintiffs respondents } In the Supreme
vs } Court of the State of
Harless defendant appellant } Missouri a St Louis =

Respondents' Brief =

Relation of Landlord and tenant once established, the tenant cannot resist a demand of rent, unless he shows that he was evicted, or otherwise legally entitled to quit the possession, and has done so in an unqualified manner. or that the landlord has accepted another person as his tenant in his stead.

Taylor's Landlord & Tenant (Ed 1852) p 241 Sec 372

Where the landlord suffers the tenant to remain in possession after the expiration of the original tenancy, receives rent, and thereby establishes a new tenancy, the law presumes the holding to be upon the same terms and subject to the same rent, and to all the covenants contained in the original lease, so far as they are applicable to the new condition of things -

Ibid Sec 58 - p 35

Stoops vs Devlin 16 Mo R - 162

What a surrender Kerr vs Clark XIX Mo 132.

That defendant could not show that he was a surety

Smyth vs Spalding 13 Mo - p 532

—— // ——

That though a surety he could bind himself as principal.

Pilot vs Lignaigo 22 Mo - p 587 and the cases in plaintiff's brief cited by Judge C B Lord p 590.

X - Mo p 488 - Hegel vs Lindell =

Byrne's testimony dont show that Harless ever desired to rid himself of the lease he had made. Had such been his desire he could have readily availed himself of Sec 12 = Landlord & Tenant - p 1012 Rev Stat 55 -

Hen E P Garesché
Atty of respondents

105 Mch T 62

Pottle Gals

v

Harless

Respondents' Brief

Filed April 28. 1862

A W Mead

Clerk

Pottle et al, respondents
v.
Harless, appellant

In the Supreme Court.

Additional Brief by Appellant.

Parol evidence is admissible to show that a party signed as security, when he appears as principal.
Garrett v. Ferguson 15, ~~124~~ Mo. 174.
Scott v. Bailey, 23 Mo. 140.
Foster v. Wallace, 2 Mo. 231. (new paging 189.)

Harless' liability ~~ex~~ ceased with the expiration of the lease. After its expiration he could not be held responsible for the rent, ~~and~~ either as principal or surety, and the case in 22 Mo. p 589, is no authority to the contrary.

16 Mo. p 162. Harless was never in possession.

Taylor on Landlord and Tenant, sec. 58, p 35. There is no evidence that Harless paid any rent after the expiration of the lease, and he was not a tenant.

Jno. K. Strant,
for appellant

No. 105.

Pottle et al
Resp dts
v.
Harless, Appelnt.

Supplemental
Brief By Appellant.

Filed May 6. 1862
A W Mead
Cl

Pottle & Bayley
vs
Harlep

This suit was brought originally before a justice of the peace, and on appeal from the justice to the St Louis Land Court was tried there by the Court, without a jury. No declarations of law were asked by either party or given by the Court.
The defendant (appellant) objected to some evidence given by the plaintiff, but the objection is only stated generally in the bill of exceptions, without the ground of it being stated.

Judgment affirmed

Martin & Bates.

Judges Bay & Dryden concur.

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Pottle & Bayley
vs
Harlefe

Affirmed —

Opinion Bates

✓

Filed May 14. 1862
A W Mead
Clerk

Pottle & Bailey, respondents. vs. Adolphus Harless, appellant. } In the Supreme Court. March term, 1862.

Statement of the case and Brief by appellant.

In June 1858, Pottle & Bailey sued Otto Frank and Adolphus Harless before a Justice of the Peace, on an open account for rent of a two story brick dwelling house, from Sept. 22d, to Nov. 11th, 1857, inclusive. When the case was called for trial, there not being service on the deft. Frank, the action was dismissed as to him. Trial was had before a jury and verdict and judgment rendered for the deft. Harless. Plaintiffs appealed and the transcript was sent to the St. Louis Land Court. In Feby, 1859, the case was called for trial in the Land Court, and neither party requiring a jury, it was tried by the court. Plaintiffs sought to make the deft. Harless liable for the debt sued for on the ground that he was a party to a lease of the premises described in the account filed, and which lease had expired long before the rent accrued for which suit is brought. Also on the ground that Harless had verbally promised to pay the bill. The defendant denied that he was liable in any way whatever. The bill of exceptions will show what took place on the trial. Judgment was rendered for the pltffs.

Appellant relies on the points made in the following Brief for a reversal of the judgment of the court below.

1. The St. Louis Land Court had no jurisdiction over the subject matter of the action. The appeal should have been to the Law Commissioner's Court of St. Louis County, as directed by Sec. 3 of the act creating said court. 2 R. S. p. 1597. The action did not "relate to land or any interest, claim or right therein," in the sense intended in Sec. 3 of the act establishing the St. Louis Land Court. 2 R. S. p. 1592.

2nd. The court below erred in permitting the witness Byrne to state conversations between himself and the defendant Harless, with a view of establishing a liability on the part of Harless to pay the debt sued for, based on verbal declarations of said Harless. It is immaterial whether or not plaintiffs succeeded in proving by said witness a promise by said Harless to pay the debt sued for: the object of the inquiry was to prove that fact. At the time of these conversations, Harless was released from any liability on account of his having become a party to the lease, and of course could not be charged with the debt of another, unless such promise had been reduced to writing and signed by Harless or some other person ~~for~~ by him thereto lawfully authorized. 1 R. S. sec. 5, p. 807.

3rd. From the style in which the respondents are described in the account sued on, it is evident they are partners. To entitle them to recover evidence establishing such partnership should have been introduced by them on the trial below.

4th. The lease which was handed by respondents attorney to the witness Byrne, on the trial below, was not properly or legally in evidence. The bill of exceptions shows that it was simply handed to

the witness; that before the witness had properly proven even the signatures of the parties executing it, and before a word of evidence had been offered to prove the signatures to the assignment which appears on its back, the court took the lease from the hands of the witness and examined it. Counsel for respondents, in the bill of exceptions, admits that the lease was not offered in evidence, and the expression of the judge of the court below that he understood the lease to be in evidence, amounts to nothing more than this, that he presumed or supposed it was in evidence. Against the positive statement of the attorney for respondents that the lease was not offered in evidence, the presumption or supposition of the court below does not amount to any particular sum. Counsel for appellant had no opportunity offered him to object to the reading in evidence of said lease, as he intended to do, having, as he believes, good and valid legal objections thereto, because, at no time was the offer made to read it in evidence. For the same reason, no opportunity was given to appellants counsel to require proof of the signature appearing to the assignment of the lease, and written on the back of the same.

5th. Although the name of the defendant Hailess appears on the lease as a principal, he was in fact only a surety. The witness Byrne says Otto Frank was a stranger to him, and not knowing him to be responsible, declined to lease to him, unless he would get some one to join with him who was responsible. Hailess, who was supposed to be respon-

sible, was brought to the witness and made a party to the lease only in order to secure the payment of the rent. The witness further states that it was understood at the time the lease was executed, that Harless was not to occupy the leased premises, nor did he occupy the same at any time, either before or after the expiration of the lease, – that Frank only was to occupy, and he only did occupy the premises. In this action, therefore, if any liability attaches to the deft Harless, it is only as surety.

6th. If the lessor assigned her interest in the lease without the consent or approbation of the defendant Harless, he being in fact only surety in said lease, he, Harless, was thereby released from further liability on such contract. There was no evidence that Harless consented or approved of the assignment by the lessor, or that he ever heard of such assignment.

7th. When the term for which the lease was given expired by effluxion of time, the tenancy under it was absolutely dissolved without notice for that purpose by either party. 2 Platt on Leases, p. 577. 4 Bingham. Doe dem. Tilt v. Stratton, p. 446. 2 R. S. sec. 14, p. 1012.

8th. The liability of the surety could not be extended by implication beyond the term of his contract. To the extent, and in the manner, and under the circumstances pointed out in his obligation, was he bound, and no further. 10 Mo. R. p. 566. Burge on Surety, p. 40.

9th. Aside from all other considerations, the respondents cannot recover for the reason that they have not shown that they are entitled to receive the rent of said leased premises. They were not the lessors, nor was there a particle of evidence to show that they were the owners of the fee simple title of the premises during the time covered by the lease, nor during the time for which rent was charged, and for which suit is brought. There is no pretence even that the respondents were, at any time, the owners in fee simple or otherwise of said premises at the time when the rent sued for accrued. It is true there is on the back of the lease spoken of by the witness Byrne, an assignment by the lessor of her interest therein to the respondents. But appellant insists that said assignment was not in evidence - that the respondents never offered to read it in evidence - that the appellant never consented that it should be read in evidence - that the respondents never offered to prove, and never did prove the signature appended to said assignment to be the signature of the lessor. Admitting, however for the sake of the - but for no other purpose - that said lease was assigned by the lessor to the respondents, at the expiration of the lease, all interest therein of the respondents ceased. If they were entitled to receive the rent which accrued up to the time the lease expired, on what principle are they entitled to receive rent which accrued after the lease expired? When the lease terminated, all in-

terest of the respondents in said premises terminated also.

Jno. N. Straat,
atty for appellant.

Pattie Bailey
vs.
A. Harlan.

Statement of Case
and Brief by
appellant.